

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



TIMOTHY W. HATTER (#1173445),

Petitioner,

v.

ACTION NO. 2:18cv612

HAROLD W. CLARKE,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to Petitioner Timothy W. Hatter's ("Hatter" or "Petitioner") convictions on February 8, 2011, in the Virginia Beach Circuit Court, for one count of malicious wounding and two counts of contempt of court. As a result of the convictions, Petitioner was sentenced to serve a total of 12 years and 20 days in prison.

The matter was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Report and Recommendation filed July 31, 2019 recommends dismissal of the petition with prejudice, as Hatter's claims are time-barred and he has not presented evidence sufficient to overcome the bar for federal review. Each party was advised of his

right to file written objections to the findings and recommendations made by the Magistrate Judge. On August 19, 2019, the court received Petitioner's Objections to the Report and Recommendation. The Respondent filed no response to the objections and the time for responding has now expired.


The court, having reviewed the record and examined the objections filed by Petitioner to the Report and Recommendation, and having made *de novo* findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the Report and Recommendation filed July 31, 2019. It is, therefore, ORDERED that Respondent's Motion to Dismiss (ECF No. 12) be GRANTED and Hatter's petition be DENIED and DISMISSED with prejudice.

Finding that the basis for dismissal of Petitioner's § 2254 petition is not debatable, and alternatively finding that Petitioner has not made a "substantial showing of the denial of a constitutional right," a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c); see Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a); *Miller-El v. Cockrell*, 537 U.S. 322, 335-38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483-85 (2000).

Petitioner is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. Rule App. Proc. 22(b); Rules Gov. § 2254 Cases in U.S. Dist.

Cts. 11(a). If Petitioner intends to seek a certificate of appealability from the Fourth Circuit, he must do so within thirty (30) days from the date of this Order. Petitioner may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.

The Clerk is directed to mail a copy of this Final Order to Petitioner and to provide an electronic copy of the Final Order to counsel of record for Respondent.

/s/ 

MARK S. DAVIS
CHIEF UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

Sept. 10, 2019